In the Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-596

WALLACE F. THRALL, PETITIONER

v.

CECIL M. WOLFF, REGIONAL COMMISSIONER, INTERNAL REVENUE SERVICE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

This case raises the question whether a state governor, by issuing a pardon, relieves an individual of the conviction disabilities of the Gun Control Act of 1968, 18 U.S.C. 921, *et seq.*

Petitioner constructs replica antique guns and repairs modern hunting weapons (Pet. 7). In September 1970 he applied under 18 U.S.C. 923 for a license as a dealer and manufacturer of firearms. His application was denied by the Internal Revenue Service because he had previously been convicted under Montana law of first degree assault (a felony) and had been sentenced to five years in prison. The crime involved the use of a loaded .25 caliber automatic pistol (Pet. 7). The Gun Control Act prohibits any person convicted of a crime that is punishable by more than one year in prison from shipping,

transporting or receiving any firearms or ammunition which have been transported in interstate commerce (18 U.S.C. 922(g) and (h)),[1] and bars the issuance of a firearms dealer's license to any person coming within the prohibitions of Sections 922(g) and (h) (18 U.S.C. 923 (d)(1)(B)).[2] Moreover, since the felony for which

---

[1] 18 U.S.C. 922(g) provides in pertinent part:

> (g) It shall be unlawful for any person—
>
> > (1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
> >
> > * * * * *
>
> to ship or transport any firearm or ammunition in interstate or foreign commerce.

18 U.S.C. 922(h) provides in pertinent part:

> (h) It shall be unlawful for any person—
>
> > (1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
> >
> > * * * * *
>
> to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

[2] 18 U.S.C. 923(d)(1)(B) provides in pertinent part:

> (d)(1) Any application submitted under subsection (a) or (b) of this section shall be approved if—
>
> * * * * *
>
> > (B) the applicant * * * is not prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under Section 922(g) and (h) of this chapter * * * .

petitioner had been convicted in 1942 involved the use of a firearm, he was ineligible for discretionary relief under 18 U.S.C. 925(c).[3]

After petitioner's application for a firearms license had been denied, the Governor of Montana pardoned petitioner for his 1942 felony conviction. The pardon provided (Pet. 7):

> I do hereby grant Wallace M. Thrall Full Pardon and Restoration of all Civil Rights lost by reason of the above conviction, and the right to receive, possess, or transport in commerce a firearm.

Upon receipt of the pardon, petitioner reapplied for a firearms license. After a hearing, the examiner concluded that the state governor's pardon had no effect on the disabilities following upon a felony conviction under the federal statute, and that in any event relief could not be granted under 18 U.S.C. 925(c) since the 1942 offense involved the use of a firearm. The Assistant Regional Director of the Internal Revenue Service agreed with the hearing examiner and again refused to grant the license.

---

[3] 18 U.S.C. 925(c) provides:

> (c) A person who has been convicted of a crime punishable by imprisonment for a term exceeding one year (other than a crime involving the use of a firearm or other weapon or a violation of this chapter or of the National Firearms Act) may make application to the Secretary for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of such conviction, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief will not be contrary to the public interest. * * *

Petitioner then sought review in the district court. The court granted petitioner's motion for summary judgment and ordered the Secretary of the Treasury to reconsider the denial of the license application (Pet. App. 1-3).

The court of appeals reversed (Pet. App. 5-9), holding that "Congress has the power to accord a state pardon differing effects in differing contexts, depending on its objective in creating the disqualification. Neither the inherent nature of a pardon nor full faith and credit requires that a state pardon automatically relieve federal disabilities" (Pet. App. 9). The court further held that a gubernatorial pardon was not intended by Congress to erase the fact of conviction for the purpose of the disabilities in Sections 922(g) and (h) (Pet. App. 10-14).

Because the decision of the court of appeals, upon which we rely,[4] is correct, and there is no conflict among the circuits or with prior decisions of this Court on this issue, the petition should be denied.

1. The court of appeals' decision is fully in accord with the unambiguous language of the Act, which provides that an individual's application for a firearms license cannot be approved when he "has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year," 18 U.S.C. 922(g), (h), as was petitioner. While the Secretary has discretion to relieve such an individual from the disabilities imposed by the Act, he has no discretion where the conviction was for a crime "involving the use of a firearm," 18 U.S.C. 925(c), as it was in the instant case.

---

[4]The only question not directly answered by the court below is one which was not presented to the court, *viz.*, petitioner's equal protection challenge (Pet. 10), and which is not, therefore, properly before this Court. In any event, as the court's analysis demonstrates, it is not invidious or arbitrary to disqualify from a firearms license a person, such as petitioner, who has been convicted of a felony involving a pistol, especially where his pardon is not premised on innocence. See Pet. App. 9 and n. 4. Cf. *Johnson* v. *Robison*, 415 U.S. 361.

There is no exception in any of these provisions for a person who has been pardoned by a state governor.[5] As the court of appeals aptly noted (Pet. App. 10-11):

> It is unlikely that Congress intended, in effect, to confer an even broader power on the 50 state governors, free of the standards and limitations placed on the Treasury Secretary [by Section 925(c)]. If a state pardon were an alternative to relief under § 925(c), the exception for crimes involving a firearm would have little vitality. Further, Congress would have to have assumed that a state pardoning authority would always make a satisfactory investigation of the individual's record and reputation to determine his propensity for future violence. * * *

While a pardon issued by a state governor may eliminate whatever state consequences attached to a state conviction, a state governor has no authority to eliminate *federal* consequences which also attached. The efficacy of a pardon is limited by the jurisdiction of the sovereignty granting it; a conviction knows no such bounds, since any other jurisdiction may give it whatever significance it wishes. See *Carlesi* v. *New York*, 233 U.S. 51.

2. Contrary to petitioner's contentions, the decision below does not conflict with decisions construing the scope of the pardoning power. Petitioner cites dicta in *United States ex. rel Palermo* v. *Smith*, 17 F. 2d 534, 535 (C.A. 2),

---

[5]By contrast, Title VII of the Act, which provides punishments for a felon who "receives, possesses or transports" a firearm, contains a provision exempting felons who have received a state gubernatorial pardon. 18 U.S.C. App. 1203(2) (Pet. App. 12-13). As the court below observed, the failure of Congress to provide a similar, specific exemption in Title IV (at issue here) signifies that Congress did not intend that a state pardon affect the disabilities under Sections 922(g) and (h) (Pet. App. 13).

which relies on the broad proposition in *Ex Parte Garland*, 4 Wall. 333, that when a "pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense." 4 Wall. at 380-381.

Garland merely held, however, that an attorney who had received a general amnesty for having participated in insurrection against the United States (on the Southern side during the Civil War) was entitled to resume his practice as an attorney before this Court and could properly take the statutorily prescribed oath that he had not participated in insurrection against the United States.

This Court has repeatedly recognized *Garland's* limited applicability. Thus in *Carlesi* v. *New York*, 233 U.S. 51, this Court held that a prior federal conviction could be considered by New York State under its second offender statute, despite a subsequent federal pardon, and in *Hart* v. *United States*, 118 U.S. 62, 67, this Court held that a congressional bar to payment of United States debts to Civil War insurgents applied notwithstanding a presidential pardon to the insurgents.[6]

The holding in *United States ex rel Palermo* v. *Smith, supra*, cited by petitioner, fully supports the decision of the court below. The *Palermo* court determined that United States authorities need not treat an Italian pardon as fully "blotting out" guilt for purposes of the United States immigration laws.

---

[6]See also *Knote* v. *United States*, 95 U.S. 149 (no recovery of proceeds of property forfeited to the United States); *Richards* v. *United States*, 192 F. 2d 602, 607 (C.A. D.C.) (use of a prior conviction for impeachment purposes permissible, despite an intervening pardon); *Prichard* v. *Battle*, 178, Va. 455, 465, 17 S.E. 2d 393, 397; *State* v. *Hazzard*, 139 Wash. 487, 247 Pac. 957, 958; *Page* v. *Watson*, 140 Fla. 536, 192 So. 205.

Nor does the requirement in Article IV, Section 1 that "Full Faith and Credit" be given by each state to the Acts and proceedings of every other state (and in 28 U.S.C. 1738, imposing the same requirement on federal courts) compel a different result, as petitioner contends. The provisions are applicable only to conflicts between the laws of two jurisdictions. Here, however, there is no conflict. Congress has simply decided to give effect to a state conviction but no effect to a subsequent state pardon in regard to federal licensing of firearms dealers and manufacturers.[7]

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1975.

---

[7] *Taran* v. *United States,* 266 F. 2d 561, 566 (C.A. 8), on which petitioner relies, is not inconsistent with this principle. There, in considering the effect of a state pardon on the application of federal immigration laws, the court noted that the federal statute in question "specifically and unqualifiedly" provided that the deportation provisions should not apply to one who had previously been pardoned by a state governor. In direct contrast, no such specific exemption is contained in the provisions here at issue.